

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

DEBORAUGH RODGERS,)
Petitioner,)
v.) CIV 22-237-JFH-KEW
HEATH WINFREY,)
Craig County Sheriff, and)
SARA HILL,)
Cherokee Nation Attorney General,)
Respondent,)

FILED

FEB 14 2023

BONNIE HACKLER
Clerk, U.S. District Court
By _____
Deputy Clerk

**REPLY TO SARA HILL, THE ATTORNEY GENERAL OF THE CHEROKEE NATION
OF OKLAHOMA'S MOTION TO DISMISS (Doc# 17)**

COMES NOW Petitioner Deboraugh Rodgers, *pro se*, in the above-entitled action, and for her reply to Respondent *Sara Hill, The Attorney General of the Cherokee Nation of Oklahoma's Motion to Dismiss* shows the court as follows:

I. **The only Cherokee tribe in Oklahoma with jurisdiction over all Indians within the boundaries of the Cherokee Indian Territory is the United Keetoowah Band of Cherokee Indians in Oklahoma (UKB) and not the Cherokee Nation of Oklahoma (CNO)**

The Curtis Act, 30 Stat. 495 (June 27, 1898), abolished tribal courts and subjected all persons in the territory to federal law. This meant that there could be no enforcement of tribal laws and that any tribal legislation passed after 1898 had to be approved by the president of the United States until the Oklahoma Indian Welfare Act (OIWA) of 1936, 60 Stat. 976, which provided an avenue for tribes in Oklahoma to become federally recognized. This is further substantiated by:

Resolution #3-22, A RESOLUTION OPPOSING FEDERAL OR STATE RECOGNITION OF GROUPS THAT CLAIM TO BE TRIBAL NATIONS AND SEEK TO AVOID OR CIRCUMVENT THE DEPARTMENT OF INTERIOR'S OFFICE OF FEDERAL ACKNOWLEDGEMENT PROCESS,

see, Tri-Council Resolution #3-22 (June 23, 2022), Exhibit 1, submitted by Eastern Band of Cherokee Indians, and adopted by the Councils of the three federally recognized Cherokee Tribes at the Tri-Council Meeting held in Tahlequah, Oklahoma on, June 23, 2022, stating in part:

“. . . the Cherokee Tribal Governments strongly desire to protect the integrity of Cherokee identity and sovereignty.”

And further states in part:

“BE IT FURTHER RESOLVED, the Tri-Council of the three Federally recognized Cherokee Tribes does hereby support the administrative process in the Department of the Interiors Office of Federal Acknowledgement for groups claiming tribal identity; . . .”

The Department of Interior’s Office of Federal Acknowledgement’s process is defined in 25 CFR §§ 83.4 and 83.11. CNO has ignored the strict requirements of the federal government as stated in 25 CFR and the unanimously agreed upon and adopted *Resolution #3-22*, *Id.* (by the Tri-Council of the three Federally recognized Cherokee Tribes) in which Chuck Hoskin, Jr., Principal Chief, acknowledged in agreement with his signature of endorsement.

The federal law, Respondent referenced, regarding tribal courts states, “. . . and tribunals by and through which they are executed, including courts of Indian offenses;” 25 U.S.C. § 1301(2) does not apply to the Cherokee Nation of Oklahoma ‘courts of Indian offenses.’ The Cherokee Nation of Oklahoma tribe has done nothing to satisfy these federal requirements.

The Historical Cherokee Nation refers to the entity encompassing the various groups of Cherokee Indians before the enactment of the Curtis Act of 1898 of which terminated the tribal government and courts in the years immediately preceding statehood. The final Act, (March 1,

1901), Fifty-sixth Congress, Session II, Chap. 675, “an Act to Ratify and Confirm an Agreement with the Cherokee Tribe of Indians and for other purposes”), states in Item 75, “No act, ordinance, or resolution of the Cherokee national council in any manner affecting the lands of the tribe, or of the citizens thereof, except appropriations for the necessary incidental and salaried expenses of the Cherokee government as herein limited, shall be of any validity until approved by the President of the United States.” This provision has not been changed by Congress subsequently. It has been held that a Treaty cannot be changed except through another Treaty, or by way of an Act of Congress.

II. While the Muskogee (Creek) Nation took advantage of the opportunity to reorganize under the OIWA, to restore a tribal court, the CNO did not

When challenged by similar matters, the Muscogee Creek Nation did litigate the issues surrounding the extension of the Curtis Act abolition of tribal courts as outlined in the Creek agreement, May 25, 1901, (31 Stat. 861, 863), which, like the Cherokee agreement, (32 Stat. 716, 717) was enacted into federal law in 1901. In *Muskogee (Creek) Nation v. Hodel*, 851 F.2d 1439, 1443 (D.C. Cir. 1988), a three-judge federal court of appeals panel concluded that since the “Curtis Act and the Creek Agreement expressly stripped the Tribe of the power to have courts . . . that power was not part of the ‘present’ Tribal government” as that phrase was used in the Five Tribes Act of 1906, (April 26, 1906), 34 Stat. 137. Thus, in the absence of any congressional legislation repealing the Curtis Act abolition of tribal courts, the Muskogee Creek Nation would not have been able to re-establish a tribal court system. The old laws continued in force. The Hodel court decided, however, that because the Creeks had re-organized under the OIWA in 1979, their right to establish a court system had been restored by a “general repealer clause” in the OIWA which was held to have repealed the Curtis Act by implication. In other

words, as an OIWA tribe, their inherent sovereign rights of self-government had been fully restored.

Unlike the Muskogee Creek Nation, the CNO has never reorganized under the OIWA. *See* Def.'s Mot. to Dismiss for Want of Jurisdiction (July 25, 2022,22), Dkt. No 7 at 15. Consequently, the CNO may not claim the benefit of the "general repealer clause" in the OIWA that enabled the Creeks to re-establish their tribal court system. This is in opposition to Respondent's statement that prior case law "establishes the legitimacy of the Cherokee Nation courts," *United Keetoowah Band of Cherokee Indians in Oklahoma v. Barteaux*, 527 F. Supp. 3d 1309 (N.D Okla. 2020).

In contrast, on January 14, 2005, the UKB Council enacted Resolution 05-UKB-17 To Recognize The UKB Tribal Court System, "WHEREAS, the United Keetoowah Band has previously established a Tribal Court, appointed a court clerk, appointed Judges to preside over court matters, appropriated money to operate the court and paid court personnel from Court Code hereby recognize[d] the court as the viable and functioning judicial branch of the United Keetoowah Band." *see*, UKB Resolution 05-UKB-17 (January 14, 2005), Exhibit 2. According to the UKB website, the Tribal Judicial Center is the home of the Tribal Court of the UKB and is the system of courts and judges that interpret and enforce laws. It operates under the UKB Constitution and was created to exercise its authority as a sovereign and to meet the needs of its members. Petitioners my come to the Tribal Court to request legal remedies or redress grievances. The Tribal Court protects the interests of justice and equity while promoting the welfare and sovereignty of its Tribal citizens. The Tribal Court consists of a District Court to

hear civil, criminal, and juvenile matters, and a Supreme Court to hear cases of appeals and other matters as may be conferred by statute.¹

III. Unlike the CNO, the UKB had reorganized under the OIWA in 1950

By the Act of August 10, 1946, 60 Stat. 976, Congress recognized the United Keetoowah Band of Cherokee Indians in Oklahoma for the purposes of organizing under the OIWA. In 1950, the UKB organized under a Constitution and Bylaws approved by the Secretary of the Interior. Members of the UKB consist of all persons whose names appear on the list of members identified by a resolution dated April 19, 1949, and certified by the Superintendent of the Five Civilized Tribes Agency on November 26, 1949, with supreme governing body (UKB Council) consisting of nine members who are elected to represent the nine districts of the old Cherokee Nation and four officers, elected at large.² Upon issuance by William E. Warne, Assistant Secretary of the Interior, in 1950. The Charter was duly submitted for ratification to the adult members of the Band, and on October 3, 1950, was duly ratified by a vote of 1,414 for, and 1 against, in an election in which at least 30 percent of those entitled to vote cast their ballots. *see, Certification, (May 8, 1950), Exhibit 3.*

The failure of the Cherokee Nation of Oklahoma to reorganize under the OIWA is fatal to its jurisdiction and to its organization of government and tribal courts. For this reason and for other reasons set forth herein, the Respondent's motion to dismiss should be denied.

IV. The Petitioner was denied a speedy trial of the issues in violation of the Constitutions of the CNO, the UKB, the State of Oklahoma and the United States of America

¹ <https://www.ukb-nsn.gov/ukbtribalcourt>

² http://www.doi.gov/bia/ancestry/cher_anc.html.

Although Petitioner was arrested on April 7, 2021, she has not been convicted of a crime from this event. Initially Petitioner was arrested for: (1) driving under influence- liquor or drugs-refusal (2) no driver license (3) unsafe lane use (4) obstruction (5) resisting executive officer (6) transporting a loaded firearm (7) possession of a firearm while intoxicated and (8) failure to surrender driver license by two Tahlequah City (Municipality) Police Officers and released two days later with a Medical Oral Recognizance Release by Honorable Josh King of the District Court of Cherokee County, State of Oklahoma. *See* Inmate Booking Sheet (April 7, 2021), Exhibit 4; *see also* Minute Order (April 9, 2021), Exhibit 5. After the State of Oklahoma declined to file charges based on jurisdictional grounds, Petitioner was ordered to appear in Cherokee Nation District Tribal Court on May 18, 2021, *see* Minute Order (April 23, 2021), Exhibit 6, of which she did appear for her initial appearance and pled not guilty for each of the three charges. *See* Court Minute/Order (May 18, 2021), Dkt. 7 Exhibit 2. Subsequently, on May 7, 2021, the Cherokee Nation of Oklahoma's Assistant Attorney General, Sandy Crosslin charged the Petitioner with (1) driving a motor vehicle while under the influence of alcohol-incapable of safe driving (2) resisting an officer and (3) transporting loaded firearm in vehicle. *See* Information (May 7, 2022), Dkt. No. 17 Exhibit 1. Over a year later and after the Attorney General's office finally reviewed the evidence, the charges were amended on July 26, 2022, to exchange the word "*alcohol*" with the word "*drugs*" upon realizing there was no alcohol involved. *See* Amended Information (July 26, 2022) Exhibit 7.

Petitioner does not dispute the location of the arrest was within the boundaries of the Cherokee Indian Territory, nor does she dispute her status as a "*citizen*" of the Cherokee Nation of Oklahoma **and** a "*member*" of the United Keetoowah Band of Cherokee Indians of Oklahoma. *See* Motion to Dismiss for Want of Jurisdiction (August 25, 2022), Dkt. No. 7 at 15.

Petitioner does not dispute the federal law as mentioned by Respondent in reference to the authorization of tribal courts “to exercise criminal jurisdiction over *all Indians*,” 25 U.S.C. § 1301(2) (emphasis added). The correct tribal court for the Cherokee Indian Territory to exercise jurisdiction over all Indians would be the United Keetoowah Band of Cherokee Indians of Oklahoma.

Petitioner does not dispute the facts of events brought forth by Respondent regarding having had an attorney and then representing herself as *pro se*.

Petitioner did decline several plea offers due to her plea of not guilty and knowing she did not commit the crimes as charged by the office of the Cherokee Nation Attorney General. She also could not sign the Court Minute/Order from the May 20, 2022, hearing because the Assistant to the Attorney General penned the statement that the Petitioner had requested a trial. *See* Court Minute/Order (May 20, 2022), Dkt. No. 7 at 108. This written statement is untrue. During the pretrial hearing the Petitioner did, however, present oral motion to dismiss for denial of speedy trial. A speedy trial is a right of the people established by the Constitution of the Cherokee Nation of Oklahoma, United Keetoowah Band of Cherokee Indians in Oklahoma, State of Oklahoma and the United States. Each of the documents were untruthful and would go against the Petitioner’s religious beliefs which does not allow her to falsify documents/information for fear of wrath and therefore, Petitioner could not accept/sign.

V. Both the Cherokee Nation of Oklahoma District Court and the Cherokee Nation of Oklahoma Supreme Court abused the rules of the Courts and in doing so denied the Petitioner opportunity of due process

On July 25, 2022, Petitioner filed a Motion to Dismiss for Want of Jurisdiction. *See* Motion to Dismiss for Want of Jurisdiction (July 25, 2022), Dkt. No. 7 at 15. The Cherokee Nation of Oklahoma District Court denied the motion to dismiss, adopting the legal analysis

contained in the Cherokee Nation's objection to Petitioner's motion. *See Order Denying Def.'s Mot. To Dismiss* (Aug. 12, 2022), Dkt. No. 7 at 88; *see also* Pl.'s Obj. to Def's Mot. To Dismiss (Aug. 8, 2022), Dkt. No. 7 at 82. According to the Cherokee Nation Supreme Court Rule 71(B), "an appeal to the Supreme Court in criminal cases shall be made no later than thirty (30) days after entry of the written judgement or **order** of the District Court." (Emphasis added). Accordingly, Petitioner should have been allowed thirty (30) days from the date Judge Barteaux denied Petitioner's motion to dismiss. To allow Petitioner her due process in filing an appeal in the Supreme Court, the District Court should have allowed the thirty days to file the petition. The deadline for time to file the petition should have been on Sunday, September 11, 2022. Petitioner was denied 20 days and only given 10 days to prepare and file the appeal due to the manner which the Cherokee Nation of Oklahoma and the Court prejudiced Petitioner by ignoring their own court rules. Additionally, Petitioner first appeared *pro se* on May 19, 2022 allowing only three months and two days to prepare for trial. From May 19, 2022 to August 22, 2022, Petitioner moved the Court by motion a total of seven (7) times and each and every motion was denied by the Court. However, the case is almost two years old and every single motion an attorney has filed has be accepted by the Court.

VI. The CNO has failed to comply with the OIWA and the federal regulations as defined in 25 CFR §§ 83.4 and 83.11

The federal law is well established for procedure to be acknowledged as a federally recognized Indian tribe. In the state of Oklahoma, the process is the Oklahoma Indian Welfare Act (OIWA) of 1936, 60 Stat. 976, outlined in 25 CFR §§ 83.4 and 83.11 and endorsed by the Principal Chief of the Cherokee Nation of Oklahoma and the Council upon adoption of Resolution #3-22, A RESOLUTION OPPOSING FEDERAL OR STATE RECOGNITION OF GROUPS THAT CLAIM TO BE TRIBAL NATIONS AND SEEK TO AVOID OR

CIRCUMVENT THE DEPARTMENT OF INTERIOR'S OFFICE OF FEDERAL ACKNOWLEDGEMENT PROCESS. The statement from Respondent that Judge Frizzell---in the Barteaux case, *see* 527 F. Supp. 3d at 1324-1326; c.f., *United Keetoowah Band of Cherokee Indians in Okla. V. Kempthorne*, 630 F Supp. 2d 1296, 1303 (E.D. Okla. 2009), have been “correctly rejected” by claiming the OIWA *repealed* The Curtis Act is flawed in that a decision of the court cannot determine the *repeal* of an act of Congress but that only an act of Congress can repeal such an act. Furthermore, if we entertain the idea that a tribe in Oklahoma does not need to adhere to the standards outlined in the OIWA, for what purpose would the three Cherokee federally recognized tribes have to outline the provisions of becoming such a tribe in the Resolution #3-22 which specifically states that the Tri-Council “oppose[s]” any tribe seeking federal recognition and “avoid[ing] or circumvent[ing] the Department of Interior’s Office of Federal Acknowledgement process” of which “the Tri-Council of the three federally recognized Cherokee Tribes does hereby support the administrative process in the Department of the Interior’s Office of Federal Acknowledgement for groups claiming tribal identity.” The CNO has decidedly and purposefully failed to accomplish the very provisions and standards they propose other groups adhere to.

It is unclear exactly the moment Cherokee Nation of Oklahoma became known as ‘federally recognized’ due to no act of Congress exists to acknowledge the Cherokee Nation of Oklahoma as a ‘federally recognized’ tribe.

On April 26, 1906, Congress approved House Resolution 5976, "An Act to Provide for the Final Disposition of the Affairs of the Five Civilized Tribes in the Indian Territory and for Other Purposes." This act paved the way for Oklahoma's statehood the following year. Congress closed the rolls in 1907 to the historical Cherokee Nation. Act of April 26, 1906, 34 Stat. 137.

The Cherokee Nation of Oklahoma has long maintained there is no distinction between it and the historic Cherokee Nation. By closing the rolls in 1907, Congress effectively imposed a sunset provision on its relationship with the historical Cherokee Nation. The Federal relationship would exist so long as its members survived. This is consistent with Congress' expectation that the government of the historical Cherokee Nation, like the governments of the other Five Civilized Tribes, would not be permanent. *See. Act of April 26, 1906, 34 Stat. 137, § II.* Moreover, there are significant political differences in governmental organization between this historical Cherokee Nation and the Cherokee Nation of Oklahoma which rendered the Cherokee Nation of Oklahoma a new political organization. The Secretary of the Department of the Interior appointed the Chief of the historic Cherokee Nation to perform ministerial acts. The Secretary of the Department of the Interior could remove the Chief for failure to perform his duties. *Act of April 26, 1906, 34 Stat. 137, § 6.* Tribal voters elect the Principal Chief of the CNO to perform all executive functions. The historic Cherokee Nation did not have a functioning legislature, and if it had, its enactments would have been subject to presidential approval. The CNO has an elected Tribal Council which is free of presidential oversight. The courts of the historic Cherokee Nation had been outlawed by Congress in the Curtis Act and cannot be repealed by any means other than an act of Congress. The Cherokee Nation of Oklahoma is a new political organization, therefore, because the historical Cherokee Nation no longer exists, the CNO government is a new government.

VII. Petitioner appearing *pro se*, is representing herself and following the guidelines granted to her by the Magistrate Judge, to the best of her ability

The respondent argues that the Petitioner is seeking relief under an inapplicable statute against the wrong respondents. In this case, the Petitioner, who is not an attorney, has done the best that she could to present her position and the designation of the statute under which she is proceeding. Petitioner filed an original Petition for Relief From a Conviction or Sentence By a

Person in State Custody (Petition Under 28 U.S.C. 2254 for a Writ of Habeas Corpus) on August 25, 2022. *See* Minute Order (August 25, 2022) Dkt. No. 1. And on August 29, 2022, Magistrate Judge West “construe[d] this action as arising under 28 U.S.C § 2241, because Petitioner is challenging her pretrial detention.” Magistrate West directed the Court Clerk to send a Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 to Petitioner. *See* Minute Order (August 29, 2022), Dkt. No. 3; *see also, Walck v. Edmondson*, 472 F.3d 1227, 1235 (10th Cir. 2007) (citations omitted). While incarcerated at the Cherokee County Detention Center, Petitioner did receive the habeas corpus petition pursuant to 28 U.S.C. § 2241. However, Petitioner was transferred to Craig County Detention Center before the deadline of 21 days (September 19, 2022) in which she complied with Magistrate Judge West’s instruction to notify the court of her change of address regarding 28 U.S.C. § 2241. *See* Minute Order (September 13, 2022) Dkt. No. 5. Upon transfer, a Minute Order was entered “by Magistrate Judge Kimberly E. West, substituting Craig County Sheriff Heath Winfrey and Cherokee Nation Attorney General Sara Hill as the respondents in this action.” *See* Minute Order (October 27, 2022) Dkt. No. 8. The Petitioner believes the Court should reinstate the Cherokee County Sheriff as a respondent. As to the Attorney General of the CNO, that designation of her as the representative of the Cherokee Nation of Oklahoma was also done by the Magistrate Judge. Therefore, it has been by order of the court to address whom is the Respondent. *See* Minute Order (October 27, 2022) Dkt. No. 8.

VIII. The reliance of Petitioner upon 28 USC § 2241 is appropriate and Respondent’s interpretation of the Cherokee Nation Supreme Court rules, 70(B) and 71(B) is fatally flawed

The Respondent alleges that Petitioner has erred in seeking a writ of habeas corpus under 28 U.S.C. § 2241, relating to her alleged pre-trial detention. The Respondent apparently alleges Petitioner should be proceeding under 25 U.S.C. § 1303. Petitioner alleges the Respondents

Motion to Dismiss for Want of Jurisdiction, July 25, 2022, Dkt. No. 7 at 15. District Court Judge Barteaux denied the Motion to Dismiss for Want of Jurisdiction. *See Order Denying Def.'s Mot. To Dismiss for Want of Jurisdiction* on August 12, 2022, Dkt. No 7 at 88.

On August 18, 2022, the Petitioner herein, filed a Motion to Stay Proceedings in the Cherokee Nation District Court, for a stay of the jury trial scheduled for August 22, 2022, pending an appellate review by the Cherokee Nation of Oklahoma Supreme Court on the matter of jurisdiction and the same day, Judge Barteaux denied the motion to stay. *See Motion to Stay Proceedings* (August 18, 2022) Dkt. No. 7 at 90; *see also Order Denying Def.'s Motion to Stay Proceedings* on August 18, 2022, Dkt. No. 94. However, the Office of the Attorney General filed the Cherokee Nation's Objection and Response, albeit the day after the Judges Order of denial. *See Cherokee Nation's Objection and Response to Def.'s Mot. to Stay Proceedings* (August 19, 2022) Dkt. No. 7 at 92.

On August 22, 2022, Petitioner appealed the August 12, 2022, decision to deny the motion to dismiss to the Cherokee Nation of Oklahoma Supreme Court and the jury trial then proceeded through the beginning stages until it ended due to conflict between the Petitioner and Judge Barteaux over the rulings that the Court had made. *See Order Denying Def.'s Mot. To Stay Proceedings* August 18, 2022, Dkt. No. 7 at 94; *see also Transcript by Susan L. Sweeney, CSR of proceedings* on August 22, 2022, pages 1-6, 41-43, 49, ~~Exhibit 11~~.

Under the Supreme Court rules, the Court requires that the Petition in Error be filed and that the record be designated and that the parties be served. Petitioner succeeded in filing the Petition in Error before the District Court had acted and designated the record, but she did not have time to serve the Office of the Attorney General on August 22, 2022. During that hearing, which is in the transcript that is in the file, Judge Barteaux charged the Petitioner with contempt

of court, arrested her, and incarcerated her. *See* Respondent Sara Hill's Mot. To Dismiss December 8, 2022, Dkt. No. 17 at 3. She was transferred to various jails from August 22, 2022, until her release from custody with own recognizance bond on October 7, 2022. *See* Respondent Sara Hill's Mot. To Dismiss December 8, 2022, Dkt. No. 17, exhibit No. 8. Because of the long period of time while she was incarcerated, the majority of which Petitioner was "held" without bond, charges, court date or a release date, she was unable to serve the Petition in Error upon the Office of the Attorney General until October 18, 2022. *See* Petition In Error (August 22, 2022) Dkt. No. 7 at 95 and 97; *see also* Certificate of Mailing to All Parties and Court Clerk (October 18, 2022), Exhibit 8. Thereafter, the Attorney General responded to the Petition in Error on November 16, 2022, and the Supreme Court dismissed the appeal for Petitioner's failure to file a Brief in Chief in the time provided by the Court rules. *See* Appellee's Motion to Dismiss Petition In Error and Application to Stay (November 16, 2022) Exhibit 9; *see also*, Order, December 9, 2022, Exhibit 10. The order was signed on December 5, 2022, but was not filed stamped until 4 days later December 9, 2022, in which Respondent's Sara Hill's Motion to Dismiss, December 8, 2022, Dkt. No. 17 was filed just the previous day. This information would lead one to conclude that the Petitioner did in fact exhaust her tribal remedies.

The Cherokee Nation Supreme Court rules that are relevant to this situation. Rule 71(B), states "[a]n appeal to the Supreme Court in criminal cases shall be made no later than thirty (30) days after entry of the written judgement or order of the District Court." The 30 days would run from the date of service of the Petition in Error to the Office of the Attorney General, which in this case was October 18, 2022. Within the 30-day period provided by rule 71(B) of the Supreme Court, the Appellee, in this case, the Respondent, did respond to the Petition in Error on November 16, 2022, which was 27 days after the Petition in Error had been officially served on

the Office of the Attorney General. From the date that the Appellee responded to the Petition in Error, the Appellant, (in this case, the Petitioner), should have had 60 days to file her Brief in Chief, or until January 15, 2023, as stated in part in the Supreme Court rule 80(A) “[t]he appellant shall file and serve an appellate brief-in-chief within sixty days after the date on which the appeal has filed his/her response to the Petition in Error.” Instead of allowing her the time provided by Rule 80(A) of the Supreme Court rules, the Court issued an Order on December 5, 2022, in which the Court dismissed the appeal for failure to file a Brief in Chief. *See, Order (December 9, 2022) Exhibit 10.* Clearly this is a violation of Rule 80(A) because the Supreme Court did not allow the Appellant 60 days from the date Appellee responded in which to file her Brief in Chief. She was left with only a period of 19 days from the date that the Attorney General responded on behalf of the Appellee, and the date that the Order was entered dismissing the appeal. In so doing, the Supreme Court deprived the Plaintiff of due process that she is entitled to under the rules of the Cherokee Nation, the rules of the State of Oklahoma and the Constitution of the United States of America. The action taken by the Supreme Court is not inconsistent with its typical handling of cases that result in appellants’ being abused of their civil rights by improper decisions in violation of the rules of its own court. This court has consistently violated its own rules and does whatever it pleases for whatever the Office of the Attorney General requests they do. So, every effort was made by the Petitioner to comply with the rules and prematurely ruling the order of dismissal the Constitutional and statutory rights were violated. It should be noted that the respondent in the case, the Attorney General of the Cherokee Nation has failed to advise the Court that the Petitioner’s exhaustion of tribal remedies had ended on December 5, 2022, which is 3 days before the Motion to Dismiss was filed herein.

Respondents argue that Rule 70(B) provides that “any party in a criminal case, may appeal a judgement or sentence.” But Petitioner argues that Rule 71(B) states that “[a]n appeal to the Supreme Court in criminal cases shall be made no later than thirty (30) days after entry of the written judgement or order of the District Court.” Rule 70(B) is a general statute and Rule 71(B) is a specific statute. So, 70(B) provides a general rule and 71(B) provides a specific rule, and it is well established that general rules are overridden by conflicting specific rules.

The Respondent, without evidence, states that the Court does not permit interlocutory appeals, but fails to provide evidence for that argument. No Supreme Court Rule provides that, and nothing in those rules deal with the subject of interlocutory appeals.

The rules are in conflict and when two rules are in conflict, the specific rule (Rule 71(B)) overrules the general rule (Rule 70(B)). Therefore, the motion based upon Rule 70(B) of the Supreme Court rules should be denied, and the Petitioner’s interpretation of the correct rule should be adjudicated.

CONCLUSION

Petitioner request’s that the Motion to Dismiss of the Cherokee Nation of Oklahoma Attorney General Sara Hill be denied and that the Court enter an order clarifying who is representing the Respondents in this matter. Petitioner further suggests that the Court enter a scheduling order, if appropriate, granting the parties a period of time to conduct discovery on the issue of jurisdiction and the Cherokee Nation of Oklahoma’s failure to comply with federal laws pertaining to the establishment of a legitimate tribal nation and tribal court system.

CERTIFICATE OF DELIVERY

I, the undersigned, do hereby certify that on the 14th day of February, 2023, that I emailed, deposited in their Court mailbox, faxed, hand delivered, and or mailed by certified mail, a true and correct file stamped copy of the foregoing document to the following person(s):

Robert Trent Shores, OBA No. 19705

Amelia A. Fogleman, OBA No. 16221

GableGotwals

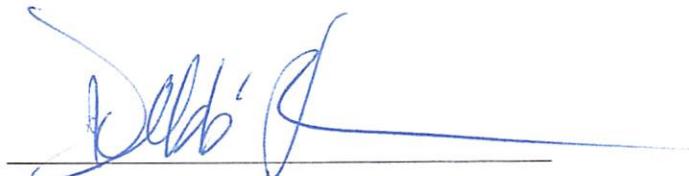
110 N. Elgin Avenue, Suite 200
Tulsa, OK 74120

Telephone: (918) 595-4800
Facsimile: (918) 595-4990
tshores@gablelaw.com
afogleman@gablelaw.com

*Attorneys for Respondent Sara Hill,
Cherokee Nation Attorney General*

P O Box 1533
Tahlequah, OK 74465
shill@cherokee.org

I further certify that a copy of the **MOTION FOR EXTENSION FOR TIME TO FILE REPLY
TO THE ATTORNEY GENERAL OF THE CHEROKEE NATION'S RESPONSE** was filed in the office of the Court Clerk of The United States District Court for The Eastern District of Oklahoma on the 30th day of December, 2022.



Deboraugh Rodgers, *pro se*

24357 E 757 RD
Tahlequah, OK 74464
918.718.1079
Deboraugh@me.com

TRI - COUNCIL
OF
THE UNITED KEETOWAH BAND OF CHEROKEE INDIANS
THE EASTERN BAND OF CHEROKEE INDIANS
AND
CHEROKEE NATION



Resolution # 3 -22

A RESOLUTION OPPOSING FEDERAL OR STATE RECOGNITION OF GROUPS
THAT CLAIM TO BE TRIBAL NATIONS AND SEEK TO AVOID OR CIRCUMVENT
THE DEPARTMENT OF INTERIOR'S OFFICE OF FEDERAL
ACKNOWLEDGEMENT PROCESS

WHEREAS, the three federally recognized Cherokee Tribes descend from the Cherokees who, since time immemorial, exercised the sovereign rights of self-government on behalf of the Cherokee People; and

WHEREAS, the three federally recognized Cherokee Tribal Governments share a common history prior to the United States' encroachment on Cherokee aboriginal lands; and

WHEREAS, the three federally recognized Cherokee Tribes continue to exercise the sovereign rights of self-government on behalf of the Cherokee people who endured and survived forced relocation and division; and

WHEREAS, the Cherokee people have fiercely protected our separate language, culture, and identity as Cherokees; and

WHEREAS, groups claiming to be Cherokee in part have used the claim of Cherokee identity as a basis for being recognized as tribes by state governments; and

WHEREAS, many of these same groups have fraudulently appropriated Cherokee identity in pursuit of federal recognition as tribes; and

WHEREAS, groups that have fraudulently appropriated Cherokee identity wrongly claim rights as tribes and Indians; and

WHEREAS, federal or state recognition of these groups would undermine the integrity of the three federally recognized Cherokee Tribes and other tribes with living tribal languages and long-standing government-to-government relations with the United States by placing politics and emotion above facts about tribal identity; and



WHEREAS, the three federally recognized Cherokee Tribal Governments have a particular interest and stake in this issue because a significant number of petitioning groups for federal acknowledgment claim to be or once claimed to be Cherokee tribes or bands, the Cherokee Tribal Governments strongly desire to protect the integrity of Cherokee identity and sovereignty.

NOW THEREFORE BE IT RESOLVED, the Tri-Council of the three federally recognized Cherokee Tribes does hereby oppose federal or state recognition of the "Lumbee Tribe," the "Chickamauga Nation," and the "MOWA Band of Choctaw," and state recognition of the "Wolf Creek Cherokee Tribe" and any other state recognition effort from a group claiming Cherokee identity that seeks to avoid or circumvent the Department of Interior's Office of Federal Acknowledgement process;

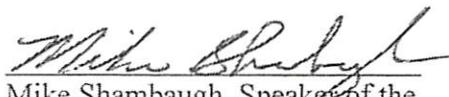
BE IT FURTHER RESOLVED, the Tri-Council of the three federally recognized Cherokee Tribes does hereby support the administrative process in the Department of the Interior's Office of Federal Acknowledgment for groups claiming tribal identity; and

BE IT FINALLY RESOLVED, this Resolution shall be the policy of the Tri-Council of the three federally recognized Cherokee Tribes until it is withdrawn or modified by subsequent resolution.

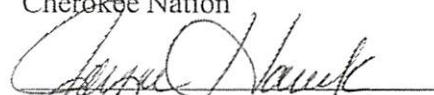
Submitted by: Eastern Band of Cherokee Indians

CERTIFICATION

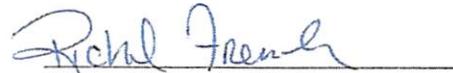
The foregoing resolution was adopted by the Councils of the three federally recognized Cherokee Tribes at the Tri-Council Meeting held in Tahlequah, Oklahoma on, June 23, 2022 having 36 Tri-Council members present, constituting a quorum, by the vote of 36 yea; 0 nay; 0 abstaining.



Mike Shambaugh, Speaker of the Cherokee Nation



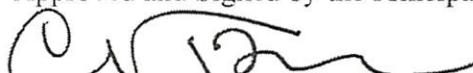
Joyce Hawk, Council
United Keetoowah Band of Cherokee Indians



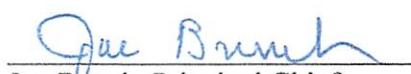
Richard French, Chairman
Eastern Band of Cherokee Indians

ATTEST

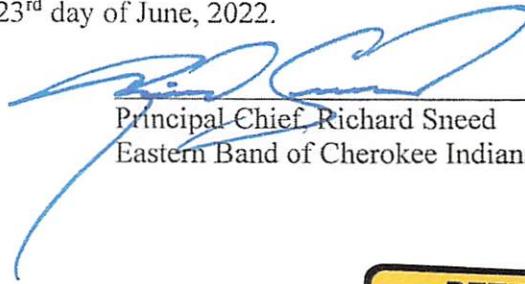
Approved and Signed by the Principal Chiefs this 23rd day of June, 2022.



Chuck Hoskin, Jr., Principal Chief
Cherokee Nation



Joe Bunch, Principal Chief
United Keetoowah Band of Cherokee Indians



Principal Chief, Richard Sneed
Eastern Band of Cherokee Indians





United Keetoowah Band of Cherokee Indians in Oklahoma
 P.O. Box 189 • Park Hill, OK 74451
 2450 South Muskogee Ave • Tahlequah, OK 74464
 Phone: (918) 431-1818 • Fax: (918) 431-1873

COUNCIL

George Wickliffe
 Chief

Charlie Locust
 Assistant Chief

Liz Littledave
 Secretary

Shelbi Doyeto
 Treasurer

Eddie Sacks
 Canadian District

Cliff Wofford
 Cooweescoowee District

Jerry Hanson
 Delaware District

Woodrow Proctor
 Flint District

Joyce Fourkiller
 Goingsnake District

Susan Adair
 Illinois District

Adalene Smith
 Saline District

Barry Dotson
 Sequoyah District

Albert Shade
 Tahlequah District

RESOLUTION

January 14, 2005

05-UKB-17

TO RECOGNIZE THE UKB TRIBAL COURT SYSTEM

WHEREAS, THE UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA [hereafter, UKB or Band] is a federally recognized Band of Indians, organized and incorporated pursuant to the Oklahoma Indian Welfare Act (49 Stat. 1967), the Act of August 10, 1946 (60 Stat. 976), and the Indian Reorganization Act (48 Stat. 984), insofar as that Act applies to Oklahoma Indians; and,

WHEREAS, Article III, Section 1 of the Constitution of the UKB provides that the objective of said Band shall be to secure the benefits, rights, privileges, and powers as provided for by the above cited laws of the United States of America; and,

WHEREAS, Article III, Section 2 of the Constitution of the UKB provides further that the objective of the Band shall be to secure the benefits, rights, privileges and powers as provided for by any laws of the United States now existing or that may hereafter be enacted for the benefit of Indians or other citizens of the United States and administered by various government agencies; and,

WHEREAS, Article V, Governing Body, Section 5, the Council shall have the power to appoint subordinate personnel, committees and representatives, to transact business, and otherwise speak or act on behalf of the Band in all matters on which the Band is empowered to act now or may be empowered to act upon in the future. The Council shall also have the power to delegate such powers to individuals or subordinate groups consistent with law, under such rules and regulations as may be prescribed by the Council.

WHEREAS, the United Keetoowah Band has previously established a Tribal Court, appointed a court clerk, appointed Judges to preside over court matters, appropriated money to operate the court and paid court personnel from Tribal General Funds, and having previously passed the UKB Tribal Court Code hereby recognizes the court as the viable and functioning judicial branch of the United Keetoowah Band.

**PETITIONER'S
 EXHIBIT**

2 Page 1 of 3

United Keetoowah Band of Cherokee Indians in Oklahoma

Resolution #05-UKB-17

January 14, 2005

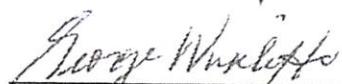
Page 2

BE IT THEREFORE RESOLVED, that the United Keetoowah Band Tribal Court is here by recognized as a viable, functioning court with all powers inherent therein as the judicial branch of the United Keetoowah Band.

BE IT FINALLY RESOLVED: That Resolution #05-UKB-17 hereby rescinds any and all preceding resolutions that may be inconsistent with the matter.

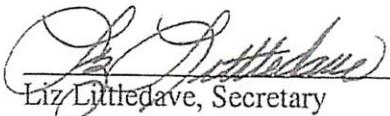
CERTIFICATION

I hereby certify that the foregoing Resolution #05-UKB-17 was approved by the Council of the United Keetoowah Band of Cherokee Indians in Oklahoma (UKB) during a Regular meeting convened for business on the 14th day of January, 2005, with 13 members present to constitute a quorum by a vote of 8 for or Yes, 4 Against/Opposed or No, and 0 Abstentions.



George Wickliffe, Chief

Attest:



Liz Littledave, Secretary

**PETITIONER'S
EXHIBIT**

2 page 2 of 3

NEW BUSINESSmotion to recognize The UKB Tribal Court Systemmotion ~~to~~: Eddie Sacks
Seconded : Adalene

AGENDA: <u>VIII</u>	Item 1	2005	YES	NO	OBSTAIN
COUNCIL					
George Wickliffe					
Chief					
Charlie Locust		X			
Asst. Chief					
Liz Littledave		X			
Secretary					
Shelbi Doyeto			X		
Treasurer					
Eddie Sacks		X			
Canadian District					
Cliff Wofford		X			
Cooweescoowee District					
Jerry Hanson			X		
Delaware District					
Woodrow Proctor		X			
Flint District					
Joyce Fourkiller		X			
Goingsnake District					
Susan Adair			X		
Illinois district					
Adalene Smith		X			
Saline District					
Barry Dotson			X		
Sequoyah District					
Albert Shade		X			
Tahlequah District					

8

4

0

PETITIONER'S
EXHIBIT

2 page 3 of 3

WILLIAM E. WARNE,

Assistant Secretary of the Interior.

WASHINGTON, D. C., *May 8, 1950.*

CERTIFICATION

Pursuant to section 3 of the act of June 26, 1936 (49 Stat. 1967), this Charter issued on May 8, 1950, by the Assistant Secretary of the Interior to the United Keetoowah Band of Cherokee Indians in Oklahoma was duly submitted for ratification to the adult members of the Band, and was on October 3, 1950, duly ratified by a vote of 1,414 for, and 1 against, in an election in which at least 30 percent of those entitled to vote cast their ballots.

REV. JIM PICKUP,

Chief, United Keetoowah Band of Cherokee Indians, Oklahoma.

WHITE RUNABOUT,

Secretary, United Keetoowah Band of Cherokee Indians, Oklahoma.

W. O. ROBERTS,

Area Director,

Muskogee Area Office.

U. S. GOVERNMENT



INMATE BOOKING SHEET

INMATE INFORMATION

RODGERS, DEBORAUGH

Inmate ID : 88077 / 10 Digits Pin : 111966

Booking Number 202100368

Local Arrest ID Number

Livescan Number 202100368



DOB 11/17/1966
Age 54
Sex F
Race I
Height 5 Ft. 7 In.
Weight 250
Hair GRY
Eye
Ethnicity
Birth City
Birth Place

Home Address
24357 E. 757 RD
TAHLEQUAH, OK 74464
Phone
(918) 644-4023
SSN
DL 3105

EMERGENCY CONTACT INFORMATION

Name , **Relationship** N/A
Address / Phone , () -

BOOKING INFORMATION

Booking Number	202100368	Booked Date	04/07/2021 04:38
Booked Type	Full booking	Cell Number	I-13A
Classification	Maximum security	Custody Status	Await initial appear
Medical Eligible	Yes	Med. Eligible Start	
Inmate Status	Confined but not convicted	Search Officer	SHANKLES,CHYANN
Booking Officer	WYSE,SAWYER	Inmate is immigration alien?	No
Search	Search Clothing Pat Search		
Conducted	No- Ext. - Ext.		
Call Made			
Notes			

RELEASED INFORMATION

Released Date	NOT RELEASED	Reason Released
Total Days In Jail		Released Officer
Bondsman		NCIC Checked ?
Released Notes	INMATE IS CURRENTLY IN CUSTODY AT CHEROKEE COUNTY DETENTION CENTER	

PETITIONER'S EXHIBIT

4 page 1 of 3

ARREST INFORMATION

Arrest Date	04/07/2021 04:38	Arresting Officer	FRITS, MATTHEW
Arresting Agency	Tahlequah PD	Local Arrest ID	
Type of Arrest	On-View arrest (taken into custody w/o warrant or incident report)		
Arrest Location	CITY HOSPITAL		
DUI Arrest?	Yes		
Fingerprint Taken	YES	Fingerprint Number	
Photo Taken	YES	NCIC Check	YES
Cited	NO	Citation Number	
Gang/Tribe/Affiliation			
Was arrestee armed with weapon?	Is the arrestee under 18 years of age? No		
Attorney	Bondsman		

CHARGE INFORMATION

CASE INFO		Count F/M Description
CASE 1	Case Number Warrant No Court Court Date Department Sentence Start Bail Type Bail Amount	Comment : 4/7 BEFORE JUDGE KING 7500 BOND 1.1 M DUI LIQUOR OR DRUGS- REFUSAL
CASE 2	Case Number Warrant No Court Court Date Department Sentence Start Bail Type Bail Amount	Comment : 1.1 M NO DL
CASE 3	Case Number Warrant No Court Court Date Department Sentence Start Bail Type Bail Amount	Comment : 1.1 M UNSAFE LANE USE
CASE 4	Case Number Warrant No Court Court Date Department Sentence Start Bail Type Bail Amount	Comment : 1.1 M OBSTRUCTION

PETITIONER'S EXHIBIT

4 page 2 of 3

CHARGE INFORMATION

CASE INFO		Count F/M Description
CASE 5	Case Number Warrant No Court Court Date Department Sentence Start Bail Type Bail Amount	Comment : 1. 1 M RESISTING EXECUTIVE OFFICER District DIS Bail Bond 1,000.00
CASE 6	Case Number Warrant No Court Court Date Department Sentence Start Bail Type Bail Amount	Comment : 1. 1 M TRANSPORTING A LOADED FIREARM District DIS Bail Bond 1,000.00
CASE 7	Case Number Warrant No Court Court Date Department Sentence Start Bail Type Bail Amount	Comment : 1. 1 F POSS OF A FIREARM WHILE INTOXICATED DC DIS No Bail
CASE 8	Case Number Warrant No Court Court Date Department Sentence Start Bail Type Bail Amount	Comment : 1. 1 M FAILURE TO SURRENDER DL District DIS Bail Bond 1,000.00
CASE 9	Case Number Warrant No Court Court Date Department Sentence Start Bail Type Bail Amount	
CASE 10	Case Number Warrant No Court Court Date Department Sentence Start Bail Type Bail Amount	

PETITIONER'S
EXHIBIT

IN THE DISTRICT COURT OF CHEROKEE COUNTY, STATE OF OKLAHOMA

STATE OF OKLAHOMA

VS.

CASE NO:

Fine(s)

Cost(s)

Rogers, Deborah
11-17-66

DOB D.L.#

sub-totals

34357 E 757 RD

TOTALS

Address
Tahlequah OK 74464

CITY STATE ZIP

DATE: Medill O.R MINUTE ORDER: Per Judge King

DEFENDANT IS ORDERED BACK: April 27 2021 @ 1:30 m.

In the event the Courthouse is closed on your above scheduled Court date, your case is continued to the next open Court day. You must appear in person or a bench warrant may be issued for your arrest.

Payments of fines, costs, fees, etc. shall be payable by money orders or cashier's checks (no personal checks or cash) Include your name and case number - Payments shall be paid to the following entities.

FINES AND COURT COSTS

Total of _____

Payable in monthly payments of _____ for _____ months

1st payment due: _____

Payable to:

Cherokee County Court Clerk
 213 W. Delaware, room 302
 Tahlequah, OK 74464

RESTITUTION

Total of _____

Payable in monthly payments of _____ for _____ months

1st payment due: _____

Payable to:

Office of District Attorney
 Cherokee County Courthouse
 213 W. Delaware
 Tahlequah, OK 74464

DRUG FUND

Total of _____

Payable in monthly payments of _____ for _____ months

1st payment due: _____

Payable to:

Office of District Attorney
 Cherokee County Courthouse
 213 W. Delaware
 Tahlequah, OK 74464

I, THE DEFENDANT, UNDERSTAND THAT I MUST PAY AND COMPLETE ALL THE THINGS LISTED ABOVE AND MUST APPEAR BACK IN COURT ON THE DATE AND TIME SET FORTH ABOVE OR I WILL BE ARRESTED AND JAILED!!

DEFENDANT

DISTRICT COURT JUDGE

DEFENDANT'S ATTORNEY

INSTANT DISTRICT ATTORNEY



IN THE DISTRICT COURT OF CHEROKEE COUNTY, STATE OF OKLAHOMA

STATE OF OKLAHOMA

VS.

Debraugh Rodgers

CASE NO:

Fine(s)	Cost(s)

DOB D.L.#

sub-totals

TOTALS

Address

CITY STATE ZIP
DATE: 4/23/21

MINUTE ORDER: State declines to file

based on jurisdiction grounds.

A hearing at C.N. Tribal court 5/18/21

DEFENDANT IS ORDERED BACK: May 18, 2021 @ 10:00 A.m.

In the event the Courthouse is closed on your above scheduled Court date, your case is continued to the next open Court day. You must appear in person or a bench warrant may be issued for your arrest.

Payments of fines, costs, fees, etc. shall be payable by money orders or cashier's checks (no personal checks or cash) Include your name and case number - Payments shall be paid to the following entities.

FINES AND COURT COSTS

Total of _____

Payable in monthly payments of _____ for _____ months

1st payment due: _____

Payable to:

Cherokee County Court Clerk
213 W. Delaware, room 302
Tahlequah, OK 74464

RESTITUTION

Total of _____

Payable in monthly payments of _____ for _____ months

1st payment due: _____

Payable to:

Office of District Attorney
Cherokee County Courthouse
213 W. Delaware
Tahlequah, OK 74464

DRUG FUND

Total of _____

Payable in monthly payments of _____ for _____ months

1st payment due: _____

Payable to:

Office of District Attorney
Cherokee County Courthouse
213 W. Delaware
Tahlequah, OK 74464**I, THE DEFENDANT, UNDERSTAND THAT I MUST PAY AND COMPLETE ALL THE THINGS LISTED ABOVE AND MUST APPEAR BACK IN COURT ON THE DATE AND TIME SET FORTH ABOVE OR I WILL BE ARRESTED AND JAILED!!**

DEFENDANT

DISTRICT COURT JUDGE

DEFENDANT'S ATTORNEY

ASSISTANT DISTRICT ATTORNEY

PETITIONER'S
EXHIBIT

6

FILED

IN THE DISTRICT COURT OF THE CHEROKEE NATION
CRIMINAL DIVISION

2022 JUL 26 AM 8:58

CHEROKEE NATION,
Plaintiff,
vs.
DEBORAUGH D RODGERS
DOB: 11/17/1966
Defendant.

CHEROKEE NATION
DISTRICT COURT
MONCOOYEA
CLERK

Case No. CM-21-772

AMENDED INFORMATION

COUNT 1: DRIVING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF DRUGS – INCAPABLE OF SAFELY DRIVING - 47 CNCA § 11-902

COUNT 2: RESISTING AN OFFICER - 21 CNCA § 268

COUNT 3: TRANSPORTING LOADED FIREARM IN MOTOR VEHICLE - 21 CNCA 1289.13

IN THE NAME AND BY THE AUTHORITY OF THE CHEROKEE NATION:

I, Sara Hill, Attorney General of the Cherokee Nation, upon oath and affirmation of office, give information that in the Cherokee Nation and within Indian Country as defined by 18 U.S.C. section 1151 and the laws of the Cherokee Nation, anterior to the presentment thereof, **Deboraugh D Rodgers** did commit the following crime(s):

COUNT 1:

That **DEBORAUGH D RODGERS** did, on or about April 7, 2021, commit the crime of **Driving a Motor Vehicle while Under the Influence of Drugs**, by driving and operating a GMC pickup, bearing license plate UKB K009, over and upon a public highway at 4th Street and El Molcajete parking lot, Tahlequah, Ok, Cherokee Nation Reservation, while under the influence of intoxicating substances to a degree which rendered her incapable of safely driving a motor vehicle.

COUNT 2:

That **DEBORAUGH D RODGERS** did, on or about April 7, 2021 commit the crime of **Resisting an Officer**, by refusing to follow the request of Officer Frits for her driver's license, refusing to get out of the vehicle upon command and grabbing the steering wheel to pull away from the officers. The said defendant knowing Dexter Scott and Matthew Frits to be a police officer in the performance of said officer's official duties.

PETITIONER'S
EXHIBIT

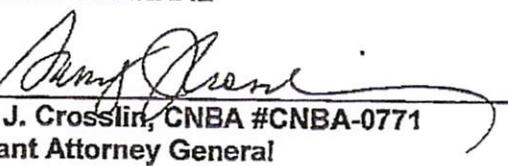
7 page 1 of 2

COUNT 3:

That DEBORAUGH D RODGERS did, on or about April 7, 2021, commit the crime of **Transporting Loaded Firearm In Motor Vehicle**, a Misdemeanor, by unlawfully, willfully and wrongfully, carry and transport a loaded firearm, to-wit: a a 9mm Taurus in a motor vehicle over a public highway, to-wit: 4th Street/El Molcajete parking lot in Cherokee Nation County, Oklahoma, said firearm not being then and there in a locked compartment of said motor vehicle.

FURTHER, the defendant and/or victim qualify as an Indian as defined in 25 U.S.C. section 1301, being a member of the Cherokee Nation, a federally recognized tribe, and the defendant did, within the Cherokee Nation and on Indian Country on the dates aforesaid, commit the above crime(s), contrary to the Cherokee Nation statutes cited above, and against the peace and dignity of the Cherokee Nation.

SARA HILL
ATTORNEY GENERAL

By: 
Sandy J. Crosslin, CNBA #CNBA-0771
Assistant Attorney General

WITNESSES ENDORSED FOR THE CHEROKEE NATION

Matthew Frits	Tahlequah PD 100 Phoenix Ave.	Tahlequah, OK 74464
Dexter Scott	Tahlequah PD 100 Phoenix Ave.	Tahlequah, OK 74464

PETITIONER'S
EXHIBIT

7 Page 2 of 2

Verified by Debrah L.

(Signature of Pro Se Party)

CNBA

Firm:

Address 24357 E 757 RD

City Tahlequah

State OK Zip 74464

Phone (918) 718-1079

Fax: ()

X. CERTIFICATE OF MAILING TO ALL PARTIES
AND COURT CLERK

I hereby certify that a true and correct copy of the Petition in Error, was mailed hand delivered DC this 22nd day of August, 2022 to the following:

18/08/22 *October*
Sara Hill
Cherokee Nation Attorney General
Sandi Crosslin,
Cherokee Nation Assistant Attorney General
P.O. Box 1533
Tahlequah, OK 74465

Debrah L.
Deborah Rodgers, pro se

Kristi Moncooyea
Cherokee Nation District Court Clerk
P.O. Box 1097
Tahlequah, OK 74465

I further certify that a copy of the Petition in Error was mailed to, or filed in, the office of the Court Clerk of the Cherokee Nation Supreme Court on the 22nd day of August, 2022.

Court Clerk

Rec'd 10-18-22
BC

PETITIONER'S
EXHIBIT

8

FILED

IN THE SUPREME COURT OF THE CHEROKEE NATION
CRIMINAL DIVISION

2022 NOV 15 PM 2:42

Deboraugh Rodgers,)	CHEROKEE NATION SUPREME COURT KENDALL BIRD, COURT CLERK
)	
Defendant-Appellant,)	
)	
vs.)	Sup. Ct. Case No.: SC-2022-07
)	
Cherokee Nation,)	
)	
Plaintiff-Appellee.)	

APPELLEE'S MOTION TO DISMISS PETITION IN ERROR AND APPLICATION TO
STAY¹

COMES NOW the Cherokee Nation ("Nation") and moves to dismiss the Defendant's Petition in Error and subsequent Application for Stay on the basis that that such interlocutory appeal is impermissible under the Rules of the Supreme Court of the Cherokee Nation and that a stay is therefore unnecessary.

Supreme Court Rule 70 prohibits criminal interlocutory appeals until the District Court has issued a judgment or sentence. Rule 70B states "any party in a criminal case, may appeal a judgement or sentence."² In this case, the District Court has only denied the Defendant's Motion to Dismiss.

¹ The Nation notes from a review of this Court's website that Defendant also filed a Motion for Default Judgment. However, the Nation was first noticed of this matter, via hand delivery, on October 18, 2022. There is nothing in the record that indicates the Nation was properly served or has been delinquent in filing as to allow a default judgment.

²; See also, *Cherokee Nation Education Corporation et. al v. Kimberlie Gilliland*, Case No. SC-16-25 (Mar. 31, 2022) (in a civil case with a simultaneous criminal proceeding, the Court stated that it "does not favor interlocutory appeals as the same foster multiple appeals before the record is fully established below.")

PETITIONER'S
EXHIBIT

9

page 1 of 4

FACTS

The Defendant has several criminal charges pending in the district court. In her written and verbal Motions to Dismiss, she has argued that the district court lacks jurisdiction over her. Defendant also argues that the Cherokee Nation's judicial system is illegitimate and by extension, jurisdiction over any defendant is impossible. Consistent with this view, Defendant previously refused to participate in or cooperate in the proceedings and has at times actively disrupted the judicial process to such an extent that her case could not move forward in any meaningful capacity. This has contributed to the delay in the underlying matter and the premature appeal in the present case.

ARGUMENT

Defendant bases her Petition in Error and Application for Stay on Rules 70 and 75 of the Supreme Court, which allows for a motion for relief which "show[s]...that the district court has denied an application or has failed to afford the relief which the applicant requested with the reasons given by the District Court for its action."³ However, the Petition in Error neglects to address or satisfy the basic requirements for "who" may appeal described in Rule 70. In order to be eligible for an appeal in a "criminal matter," a defendant must be appealing a "judgment or sentence" – neither of which have been handed down or filed in this case.⁴

³ 20 CNCA App. Rule 75.

⁴ 20 CNCA App. Rule 70B.



This Court has considered interlocutory appeals in relation to Rule 70 when the Nation is jointly prosecuting a civil and criminal case that share many relevant facts.⁵ Standards for a civil appeal are considerably lower than for a criminal appeal – requiring only “significant[...] and adverse[...]” effects.⁶ For example, there is no basis for an appeal or stay of proceedings except in such a case where “a party under criminal indictment is required to defend a civil proceeding involving the same matter” at the same time.⁷ Because no such extenuating circumstances exist here and the appeal lacks the required appealable judgment or sentence, the appeal should be dismissed so that the criminal proceedings can continue.

CONCLUSION

The Defendant is seeking to appeal an order denying her Motion to Dismiss for lack of jurisdiction. However, the Supreme Court Rules of the Cherokee Nation do not allow for interlocutory appeals except in certain extenuating circumstances – such as multiple ongoing civil and criminal matters involving the same defendant. Until the active criminal charges against the Defendant are adjudicated, an appeal involving these matters is inappropriate according to Supreme Court Rules and therefore should be dismissed.

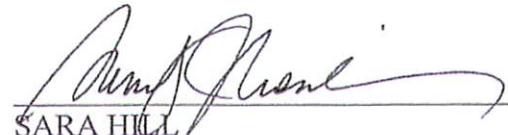
⁵ *Cherokee Nation Education Corporation et. al v. Kimberlie Gilliland*, Case No. SC-16-25 (Mar. 31, 2022).

⁶ 20 CNCA App. Rule 70A.

⁷ *Cherokee Nation Education Corporation et. al v. Kimberlie Gilliland*, Case No. SC-16-25 (Mar. 31, 2022).



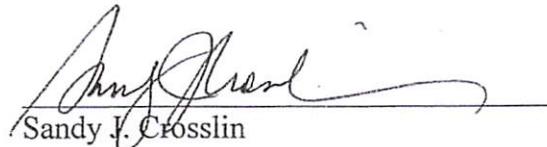
Respectfully submitted,



SARA HILL
Attorney General
SANDY J. CROSSLIN, CNBA #771
Assistant Attorney General
PO Box 1533
Tahlequah, OK 74465
(918) 453-5262

CERTIFICATE OF MAILING

I, hereby certify that on November 16, 2022 I mailed a true, correct, and copy of this to the Defendant, 24357 E. 757 Rd., Tahlequah, OK 74464 and provided a copy by email to Amanda Bradley, stand by counsel.


Sandy J. Crosslin

PETITIONER'S
EXHIBIT

9 page 4 of 4

IN THE SUPREME COURT OF THE CHEROKEE NATION

Deboraugh Rodgers,
Appellant,

v.

Cherokee Nation,
Appellee.

CASE NO.: SC-2022-07

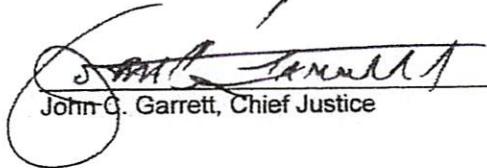
2022 DEC -9 AM 11:00
SUPREME COURT OF THE CHEROKEE NATION

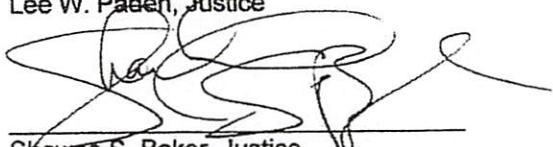
ORDER

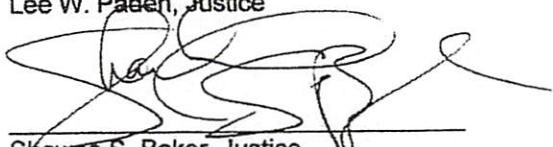
On this 5th day of December, 2022 the Court after examining the above styled appeal, enters the following findings and orders:

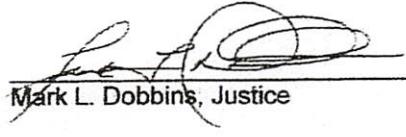
1. The Appellant has failed to comply with Rule 60 of the Cherokee Nation Supreme Court Rules and Procedures, in that no timely brief-in-chief has been filed.

IT IS THEREFORE ORDERED that this case is dismissed.


John Q. Garrett, Chief Justice


Lee W. Paden, Justice


Shawna S. Baker, Justice


Mark L. Dobbins, Justice



Rex Earl Starr
Rex Earl Starr, Justice

CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing document, Minute Order, was mailed and/or transmitted via facsimile on this 9 day of December, 2022 to the following:

Deboraugh D. Rodgers
24357 E. 757 Rd
Tahlequah, Ok 74464

Sandy Crosslin, sandy-crosslin@cherokee.org



KBird
Kendall Bird, Court Clerk

Page 2 of 2



1 IN THE DISTRICT COURT OF THE CHEROKEE NATION
2

3 CHEROKEE NATION,
4 Plaintiff,
5 vs.
6 DEBORWAUGH RODGERS,
7 Defendant.
8

CM-21-772

COPY

JURY TRIAL

10 Transcript of proceedings had and entered of record at
11 the hearing of the above-entitled cause, on the 22nd day of
12 August, 2022, before the Honorable T. Luke Barteaux,
13 District Judge in and for the Cherokee Nation.

A P P E A R A N C E S

17 || For the Nation.

MS. SANDY CROSSLIN
Assistant Attorney General
Office of the Attorney General
17675 S. Muskogee Ave.
Tahlequah, OK 74464

For the Defendant.

MS. DEBOROUGH RODGERS
Pro se



1	<u>I N D E X</u>	
2		
3	PROCEEDINGS COMMENCING 8/22/22.....	PAGE
4	PRETRIAL MOTIONS.....	3
5	VOIR DIRE.....	3
6	DEFENDANT FOUND IN CONTEMPT OF COURT.....	8
7	JURY DISMISSED.....	46
8	PROCEEDINGS CONCLUDING 8/22/22.....	47
9	CERTIFICATE OF REPORTER.....	48
10		49
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

4 Miss Crosslin, I did receive your proposed jury
5 instructions with the addition. I've also added a pro se
6 defendant instruction in those.

7 Is there any preliminary issues that we need to take
8 up this morning?

9 MS. CROSSLIN: Your Honor, Miss Rodgers filed a
10 Request for Stay. The Nation filed a response to that. I
11 don't know if there's a ruling from the Court or not, but
12 we would ask that that be addressed first thing this
13 morning.

16 MS. CROSSLIN: Thank you, Your Honor. I just
17 did not see that.

18 THE COURT: Miss Rodgers, do you have any
19 preliminary issues that need to be addressed?

20 MS. RODGERS: Yes, Your Honor

21 According to the court rules that you suggested I read
22 the last time that we met, I'm afforded 30 days to appeal a
23 denial to my Motion to Dismiss. I was not afforded that 30
24 days, upon this trial date. I would like to let it be
25 known on the record that as of this morning, I have filed

1 an appeal to the Supreme Court. So this case is now in the
2 Supreme Court.

3 THE COURT: Miss Crosslin, do you have anything
4 to add, other than what you put in your objection?

5 MS. CROSSLIN: Your Honor, I believe that my
6 objection states everything that is pertinent to Miss
7 Rodgers' Request for Stay. Rule 70 of the Appellate
8 Procedure says you may appeal as -- any party in a criminal
9 case may appeal a judgment or sentence. Your ruling was an
10 interlocutory ruling. You cannot have an interlocutory
11 appeal on a criminal case. Miss Rodgers would absolutely
12 have a right to appeal the end of this proceeding, if she
13 is, in fact, convicted. But there is no rule, there is no
14 court rule, there is no statute that allows her the right
15 to appeal your decision based on jurisdiction. She would
16 have that right at the end of the case, but just because
17 she has filed a Petition in Error in the Supreme Court of
18 the Cherokee Nation, does not mean that that's granted, and
19 it does not mean that this Court should not proceed with
20 this criminal case.

21 MS. RODGERS: Your Honor, I would like to
22 address the Court to Rule No. 75, which does allow for me
23 to file an appeal on any denial.

24 THE COURT: Your request to stay based on the
25 appeal is denied. Three years ago, the Supreme Court also

1 issued an opinion further stating their disfavor of any
2 interlocutory appeal. And appellate case law would trump a
3 prior existing --

4 MS. RODGERS: I'm sorry but I can't hear you.
5

6 THE COURT: The appellate case law on that
7 would trump any prior existing court rule on the subject.
8 So we will be proceeding with trial today.

9 MS. RODGERS: I object to this decision,
10 respectfully. My case is now in the Supreme Court. There
11 is no reason to go through this, because the Supreme Court
12 will need to rule on my appeal, which was accepted by the
13 Supreme Court -- by the Supreme Court's clerk -- file clerk
14 -- court clerk, and, therefore, they will have to make a
15 decision on this before we can proceed.

16 THE COURT: Her acceptance of your appeal means
17 nothing. It is her job to accept anything that is put
18 before her with the correct filing fee.

19 MS. RODGERS: Which I'm allowed 30 days to
20 appeal, which I was not afforded from this Court.

21 THE COURT: We'll be proceeding with the case
22 today.

23 I originally denied your Motion to Dismiss this case,
24 I believe --

25 MS. RODGERS: -- August 12th.

THE COURT: No, it was prior argued in court,

1 the same motion, prior to that. I don't have the exact
2 date, but the time that you were in court before then, you
3 made the same argument, and it was denied then. So even if
4 that rule was still valid, the way that you're reading it,
5 you'd be well beyond that.

6 Please have a seat.

7 MS. RODGERS: Your Honor, that objection that
8 you are referring to, was a change of venue objection.

9 THE COURT: Ma'am, your objection is noted.
10 It's denied. It is on the record. You can take that up
11 with the Supreme Court.

12 MS. RODGERS: Duly noted.

13 MS. CROSSLIN: Sir, I have one other issue I
14 would like to address with the Court. I have not discussed
15 this with the defendant, as she is acting as her own
16 counsel, but I would ask that the Court and that the
17 defendant accept a stipulation that one of the elements, as
18 far as her tribal status, that she is a citizen of the
19 Cherokee Nation and member of the United Keetoowah Band.
20 And I have several documents here, Findings of Fact and
21 Conclusions of Law from Adair County, which I would ask you
22 to take judicial notice of, finding that she is a member of
23 the Cherokee Nation. I have a Letter of Citizenship. I
24 also have the defendant's Motion to Dismiss that she filed,
25 alleging that she was a member of the Cherokee Nation, and

1 And would you take them back to the jury room?
2

3 The rest of the jurors sitting in the gallery, if you
4 could go out into the hall. If we need you, we will call
5 you again by name. Okay?

6 (The jury retired to the jury room and the
7 following proceedings were had in open court,
8 out of their presence:)

9 THE COURT: Miss Rodgers, I have already ruled
10 on the legal issues that you're bringing up. We're not
11 going to rehash them in front of the jury. This trial at
12 this point is as to whether or not you committed the crimes
13 as charged against you, and that is it. I've already ruled
14 on jurisdiction. My rulings stand. And we're going to
15 proceed orderly.

16 MS. RODGERS: I understand that you've ruled,
17 but I'm also allowed due process to appeal, and I have not
18 been afforded that opportunity for due process to appeal.
19 I don't understand why the Court does not recognize that
20 opportunity.

21 THE COURT: Ma'am, you've appealed. If the
22 Supreme Court sees it differently than I do, they'll wipe
23 the whole case gone. But as of today, we are proceeding
24 with this trial.

25 MS. RODGERS: Due process allows me the
 opportunity to have the Supreme Court the opportunity to
 rule on whether or not this has been resolved -- this issue

1 -- it has not been resolved to the satisfaction of the
2 rules of the court.

3 THE COURT: Ma'am, the Supreme Court disfavors
4 interlocutory. That's an appeal filed in the middle of a
5 case. They have recently ruled that. There is no law that
6 allows interlocutory appeals. Any court rule that you're
7 basing it on is overruled by statute and case law from the
8 Supreme Court. Court rules do not go over case law and
9 statutes. They're under it.

10 MS. RODGERS: There is a Rule 75. As it is
11 worded, allows me to file an appeal. And I would
12 respectfully suggest --

13 THE COURT: And you filed it. I have not --

14 MS. RODGERS: -- to make a decision.

15 THE COURT: Ma'am, I have denied your stay on
16 multiple occasions. You have filed it. You're receiving
17 due process on the issue just by having filed it. I have
18 denied that stay. The Supreme Court has not issued you a
19 stay on that issue. We are proceeding with this matter.
20 Are you going to have any questions for these jurors?

21 MS. RODGERS: I am not proceeding on this
22 matter. I was handed information from the prosecutor that
23 was not afforded to me before today. It should not be
24 submitted into evidence.

25 THE COURT: Are you going to have any questions

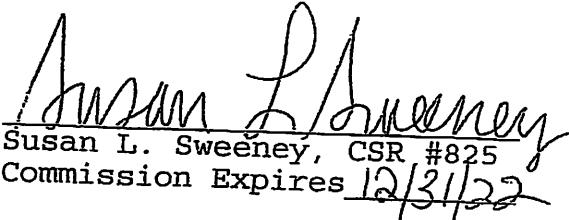
1 STATE OF OKLAHOMA)
2 COUNTY OF MUSKOGEE) ss.
3
4

5
6 C E R T I F I C A T E
7
8

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, Susan L. Sweeney, Certified Shorthand Reporter within and for the State of Oklahoma, duly appointed reporter in the District Court of Muskogee County, do hereby certify that I took down by machine shorthand the proceedings as described on page 1 herein, and the foregoing is a true and complete transcription of my shorthand notes so taken as aforesaid of said proceedings.

IN WITNESS WHEREOF, I hereunto set my hand and seal this 9th day of September, 2022.


Susan L. Sweeney, CSR #825
Commission Expires 12/31/22